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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, July 14, 1998, at 12:30 p.m.

Senate

TUESDAY, JULY 7, 1998

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, our prayer is not to overcome Your reluctance to help us know and do Your will, for You have created us to love, serve, and obey Your guidance. Rather, our prayer is to lay hold of Your willingness to accomplish Your plans through us. You have told us to call on You, to trust You completely, to put You first in our priorities, and to express our devotion to You in our patriotism. Sometimes, pride blocks our response, and we who want to keep control find it difficult to turn the control of our lives over to You. When we are self-sufficient, we do not pray; when we are self-satisfied, we will not pray; when we are self-righteous, we cannot pray. And yet, Father, when we are honest with ourselves, we know that, by ourselves, we are insufficient. We admit our profound need for Your presence, Your wisdom, and Your solutions to our problems. May this be a great day, lived to the fullest, trusting You each step of the way. Through our Lord and Savior. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT of Mississippi, is recognized.

Mr. LOTT. Thank you, Mr. President. Welcome back.

SCHEDULE

Mr. LOTT. Mr. President, this morning the Senate will immediately proceed to a vote on a motion to invoke cloture on the motion to proceed to the product liability bill. If cloture is invoked, the Senate will debate the motion to proceed until the policy luncheons at 12:30 p.m., and following the policy luncheons, it is expected the Senate will resume consideration of the HUD-VA appropriations bill. It is hoped that Members will come to the floor this afternoon to offer and debate amendments to the HUD-VA bill. I understand there are some amendments and some very legitimate amendments. I hope we will get started on those early in the afternoon so that we can have a reasonable debate, but under a time agreement, and get to a conclusion as soon as we can this week on the VA-HUD bill.

The Senate also this week will consider the IRS reform conference report. We are not sure exactly when that will begin. We thought about possibly tonight. It will depend on what happens on product liability and the HUD-VA bill, but we are definitely taking up the IRS reform and restructuring conference report before the end of the week to get a vote. I think this will be a tremendous reward for the American people for their patience, and also to help address the serious problems we have had with the IRS in recent years.

I also remind Members that July is expected to be a very busy month with late-night sessions and votes, and votes on most Fridays and Mondays. If anything develops to the contrary, of course, we will notify Members as soon

as we can. Members have to expect votes late on Monday afternoons and on Fridays also. We certainly need all Senators' cooperation to get this work done. We did get time agreements at the end of the session before we went out for the Fourth of July recess period on higher education and also on a package of energy bills. So we will work those in at the earliest possible opportunity this week or next week. I yield the floor, Mr. President.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. FRIST). Under the previous order, leadership time is reserved.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provision of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 90, S. 648, the products liability bill:

Trent Lott, Don Nickles, Slade Gorton, Phil Gramm, John McCain, Spencer Abraham, Daniel Coats, Richard G. Lugar, Lauch Faircloth, John H. Chafee, Sam Brownback, Ted Stevens, Jon Kyl, Jeff Sessions, Michael B. Enzi, and Judd Gregg.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 648, the product liability bill, shall be brought to a close? The yeas and nays are required under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Texas (Mrs. HUTCHISON) is necessarily absent.

I also announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

Mr. FORD. I announce that the Senator from Hawaii (Mr. INOUE), the Senator from Maryland (Ms. MIKULSKI), and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

The yeas and nays resulted—yeas 71, nays 24, as follows:

[Rollcall Vote No. 184 Leg.]

YEAS—71

Abraham	Faircloth	Lugar
Allard	Frist	Mack
Ashcroft	Glenn	McCain
Bennett	Gorton	McConnell
Bingaman	Gramm	Moynihan
Bond	Grams	Murkowski
Brownback	Grassley	Nickles
Bryan	Gregg	Reed
Bumpers	Hagel	Reid
Burns	Hatch	Robb
Byrd	Helms	Roberts
Campbell	Hutchinson	Rockefeller
Chafee	Inhofe	Santorum
Coats	Jeffords	Sessions
Cochran	Johnson	Smith (NH)
Collins	Kempthorne	Smith (OR)
Coverdell	Kerrey	Snowe
Craig	Kohl	Stevens
Daschle	Kyl	Thomas
DeWine	Landrieu	Thompson
Dodd	Lautenberg	Thurmond
Domenici	Leahy	Warner
Dorgan	Lieberman	Wyden
Enzi	Lott	

NAYS—24

Akaka	Durbin	Kerry
Baucus	Feingold	Levin
Biden	Feinstein	Moseley-Braun
Boxer	Ford	Murray
Breaux	Graham	Roth
Cleland	Harkin	Shelby
Conrad	Hollings	Torricelli
D'Amato	Kennedy	Wellstone

NOT VOTING—5

Hutchison	Mikulski	Specter
Inouye	Sarbanes	

The PRESIDING OFFICER (Mr. ROBERTS). On this vote, the yeas are 71, the nays are 24. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

PRODUCT LIABILITY REFORM ACT OF 1997—MOTION TO PROCEED

The PRESIDING OFFICER. The question is on the motion to proceed. Is there further debate on the motion?

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I ask unanimous consent to speak for twelve minutes as in the morning hour.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

(The remarks of Mr. THURMOND pertaining to the introduction of S. 2266 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. THURMOND. I yield the floor, Mr. President.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Washington is recognized.

Mr. GORTON. Mr. President, is the business before the Senate the motion to proceed to S. 648?

The PRESIDING OFFICER. The Senator is correct.

Mr. GORTON. Mr. President, S. 648 is a bill relating to product liability reported about 1 year ago by the Senate Commerce Committee. That bill is identical or nearly identical to the product liability legislation that passed both Houses of Congress in the last Congress and was vetoed by President Clinton.

As and when the motion to proceed is agreed to, Senator ROCKEFELLER and I will propose an amendment in the nature of a substitute on the same subject, product liability, somewhat more modest in scope than the bill that was vetoed by the President. It is the result of more than 1 year of careful and detailed negotiation involving myself, other members of this party, Senator ROCKEFELLER and various of his allies, and the Office of the President of the United States.

The willingness of the President of the United States to sign a product liability bill in the form of this substitute is due to the untiring and diligent efforts of the junior Senator from West Virginia, who has literally been tireless in pursuing a solution to a question that involved his time and my time for well over a decade, and a willingness to pursue it in a White House from which a veto emanated almost 2 years ago.

The bill, of course, is not as broad as the one that was then vetoed or the bill that was passed out by the Commerce Committee. Nevertheless, it does bring a significant degree of rationality and predictability to product liability litigation. It removes a number of severe inhibitions that stand in the way of research and development for new and approved products in the commerce of the United States. That may be its most important single feature, because we have an economy in which litigation has provided a severe inhibition to the improvement of our products, to the development of new products. Perhaps the single most vivid illustration of the value of product liability litigation is in the field of piston-driven aircraft, a subject with which the Presiding Officer is more than familiar, where a limitation on product liability litigation, a modest limitation, passed half a dozen years ago, has resulted in the recovery of an industry that had

almost disappeared in the United States of America. So we are not speaking about a theory when we talk about the inhibitions placed on various forms of business enterprise, industrial and otherwise, by the present state of the law varying from State to State through 50 States and several other jurisdictions.

While I would prefer broader product liability legislation, and while I believe the Senator from West Virginia might prefer it to be somewhat broader than it is at this point, this legislation nevertheless is good for the economy of the United States, and it is good for those who are injured by the actual or real negligence of manufacturers or sellers. It does, however, say that in the case of the seller, the seller is only going to be liable when the seller itself is negligent. It does put some rational basis on the award of punitive damages with an actual cap on punitive damages for modest and for small businesses. In that regard, it sets a uniform national standard for punitive damages in those States that allow punitive damages—my own, for example, does not—raising the bar to require clear, cogent, and convincing evidence for the award of punitive damages, a higher standard than exists in most States at the present time, with a cap on punitive damages for small businesses.

The National Federation of Independent Business has just come out with a study as to who is impacted by that, and while the definition of a small business in this bill is 25 employees or \$5 million a year in sales, their table shows that 73 percent of all the manufacturers in the United States have fewer than 20 employees, 88 percent of all the retailers in the United States have fewer than 20 employees, and 85 percent of the wholesalers in the United States fall within the same category. So, for the vast majority of business enterprises in the United States, there will be a cap on punitive damages that is realistic in nature and is something that the business might conceivably be able to pay, rather than simply being driven out of business by such a verdict.

With respect to product sellers, it simply states that the product seller avoids liability if the product seller is not itself negligent or otherwise liable. Manufacturers, under those circumstances—since they can't be joined in litigation with the product seller—can almost always achieve what amounts to fraudulent joinder and thus get diversity of citizenship, a diversity of citizenship that allows them to get into a Federal court rather than into State courts where the great majority of notorious and unwarranted verdicts in product liability cases have taken place in the past.

Product manufacturers have been frustrated by the unavailability of a "misuse" defense. They have that, to a greater extent, as a result of this bill. The bill includes a statute of repose, a very modest and narrow statute of